

PSA consultation on draft Fitness to practise guidance

Royal Pharmaceutical Society Response

1. Do you think that our fitness to practise guidance will help regulators to make best use of accepted outcomes, and use them in a way that is fair, transparent and protects the public?

In our guidance, we set out factors that regulators should consider when deciding if a case best dealt with by an accepted outcome or a panel hearing (see paragraphs 7.2-7.20 of the guidance). The questions below relate to these factors.

Yes, the guidance will help regulators decide which cases are most suitable to be assessed by a case examiner and which ones should be reviewed by an expert panel and provides a level of consistency across regulators. In terms of making the decision as to whether or not to investigate, processes should be clearly set out and transparent so all concerned know what is expected and where actions will be taken.

Timeframes should also be made available. The timeliness of processing fitness to practise cases is a concern amongst our membership and these proposals have the potential to improve timeliness.

It should be clear to registrants, employers, patients and service users when a concern needs to be referred to the regulator. It would be useful to have clear guidance on the extent to which (if at all) regulators wish to receive 'soft intelligence' which may of itself be minor, but if several others are seeing concerning patterns and trends, could indicate a bigger problem that needs addressing.

This overarching guidance will be helpful to enable regulators to build upon it to produce their own guidance. However, there is still likely to be divergence and disparity across regulators. The guidance should be continually reviewed and amended as necessary, based on feedback from regulators and regulated healthcare professionals.

2. Factor 1: 'Has the registrant failed to accept the findings and/or impairment?' Do you agree that regulators should consider this when deciding whether to resolve a case using an accepted outcome?

- **Yes**
- No
- Don't know

This does need to be a deciding factor. However, as outlined in the draft guidance minor discrepancies or disputed facts that do not have a significant impact on the impairment do not need to be included in this decision.

If the registrant does not accept the findings or impairment, they should have the opportunity to explain this at a fitness to practice hearing. A registrant should have a right of appeal against a decision by a case examiner or Fitness to Practise panel. If the initial decision can be hidden from an alternative case examiner, then they could undertake the appeal assessment. Alternatively, they could be referred to a body independent of the regulator to give the registrants confidence in the process. Some independent checks and balances need to be maintained to ensure that the way regulation works is safe and consistent across professions where it needs to be.

3. Do you have any comments on this factor, or the bullet points listed in our guidance under this factor?

Will the registrant be able to ask for a hearing rather than a resolution by a case examiner? If the registrant refuses to accept the decision of case examiner there should be a referral to a fitness to practice panel.

Regulators should keep the powers they have now to handle health concerns about a professional if there is a risk to the public. The current arrangements generally allow regulators to deal with health cases appropriately and with compassion. By contrast, the proposal would potentially lead to health cases being treated as an inability to provide care to a sufficient standard, which could be difficult for registrants. Powers need to be retained within regulation without the need for investigation as it is not a crime to be ill so there needs to be flexibility in powers around when an investigation is needed. If someone has health concerns a more supportive route should be available than the fitness to practice route, but in some cases suspension from the register on those grounds would be necessary so it is vital that option is retained

4. Factor 2: *'Is there a dispute of fact/conflict of evidence that can only be fairly tested at a hearing?'* Do you agree that regulators should consider this when deciding whether to resolve a case using an accepted outcome?

- **Yes**
- No
- Don't know

5. Do you have any comments on this factor, or the bullet points listed in the guidance under this factor?

No additional comments

6. Factor 3: *'Does the complexity of the case suggest that a hearing may be beneficial?'* Do you agree that regulators should consider this when deciding whether to resolve a case using an accepted outcome?

- Yes
- No
- **Don't know**

7. Do you have any comments on this factor, or the bullet points listed in the guidance under this factor?

It might be useful to give some illustrative examples in terms of when the complexity is significant enough for referral as complexity is varied and difficult to assess consistently. Each case examiner may view this differently so it would be useful if they could refer to a peer group if they are uncertain whether or not to refer to a panel. What is definition of complexity and how is this assessed?

8. Factor 4: *'Would it be beneficial and proportionate to test insight at a hearing?'* Do you agree that regulators should consider this when deciding whether to resolve a case using an accepted outcome?

- **Yes**
- No
- Don't know

9. Do you have any comments on this factor or the bullet points listed in the guidance under this factor?

It is interesting that the use of AI has been mentioned. Registrants may also receive help from family or friends in developing their reflective account and it is difficult to determine this as well. Registrants should be given the benefit of the doubt and only referred to a panel where it is obvious that their insight needs to be tested.

It is the implementation of the reflective account that is important, rather than how or who has written it. How will the registrant be assessed on adherence to their reflective account?

How are these factors all weighted, are some more important than others?

In our guidance, we set out some factors that regulators should consider when determining the composition of decision-makers (see paragraphs 7.21-7.29 of the guidance). The questions below relate to this section of our guidance:

10. Factor 5: Lay representation in decision-making. Do you agree that regulators should continue to ensure lay representation at some point in the fitness to practise decision-making process?

- **Yes**
- No
- Don't know

11. Factor 6: The use of single decision-makers. Do you agree that some fitness to practise cases may benefit from more than one decision-maker?

- **Yes**
- No
- Don't know

12. Do you have any comments on the bullet points listed in the guidance relating to the composition of decision makers? (See paragraph 7.29)

Case examiners should have a background in the profession they are assessing as well as an understanding of the particular role of the professional they are assessing; all case examiners need to understand the profession and the circumstances in which the individual is practicing. It is extremely important that cultural issues are considered and that case examiners represent the diversity of the profession.

Case examiners should always be able to discuss cases with a network of peers for advice and support.

The use of more than one decision maker will depend on the complexity and case mix.

In our guidance, we set out some factors that regulators should consider when publishing case examiners decisions (see paragraphs 7.30 – 7.34 of the guidance). The questions below relate to this section of the guidance:

13. Factor 7: publishing case examiner decisions. Do you agree that the bullet points in the guidance under this factor are the right ones?

- **Yes**
- No
- Don't know

14. Do you have any comments on the bullet points listed in the guidance under this factor?

No further comments to add as we support transparency and publication of decisions

In our guidance, we set out some factors that regulators should consider to promote a fair and transparent accepted outcomes process (see paragraphs 7.35 – 7.44 of the guidance). The questions below relate to this section of our guidance:

15. Factor 8: Promoting a fair and effective accepted outcomes process. Do you agree that the bullet points listed under this factor in the guidance are the right ones?

- **Yes**
- No

- Don't know

16. Do you have any comments on the bullet points listed in the guidance under this factor?

It is critical that outcomes are measured against protected characteristics.

The following questions relate to the impact of our guidance:

17. Please set out any impacts that the guidance would be likely to have on you and/or your organisation, or considerations that we should take into account when assessing the impact of our proposals.

RPS works closely with the regulator for pharmacy professionals to ensure I&D is addressed. The changes to regulation must not disproportionately affect those with protected characteristics.

18. Are there any aspects of our proposals that you feel could result in different treatment of, or impact on, groups or individuals based on the following characteristics as defined under the Equality Act 2010?

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation
- Other (please specify)
- Yes
- No
- Don't know

If you have responded 'yes' about any of the above, please provide further details, explain why and what could be done to change this.